

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

MARLON EDGARDO SIGUENZA.) NO. CV 11-8020-AG (AGR)

Petitioner,

v.

DOMINGO URIBE JR.,

Respondent.

NO. CV 11-8020-AG (AGR)

ORDER ACCEPTING FINDINGS AND RECOMMENDATION OF UNITED STATES MAGISTRATE JUDGE

Pursuant to 28 U.S.C. § 636, the Court has reviewed the first amended petition, records on file, and the Report and Recommendation of the magistrate judge. Further, the Court has engaged in a *de novo* review of those portions of the Report to which Petitioner has objected. The Court accepts the findings and recommendation of the magistrate judge.

The Report found the petition was time-barred. For clarity, the Court sets forth the procedural timeline and the Report's findings relevant to the time bar:

(1) Petitioner's conviction became final on December 9, 2008. (Report at 4.)

(2) Petitioner constructively filed a habeas petition in the Superior Court on September 8, 2009, which was denied on June 30, 2010. (*Id.* at 2.) As of the

1 denial, Petitioner had 92 days remaining in the limitations period. (*Id.* at 6 n.2.)

2 (3) Petitioner constructively filed a habeas petition in the California Court
3 of Appeal on September 9, 2010, which was summarily denied on November 10,
4 2010. (*Id.* at 2.) The gap between the Superior Court's denial and this filing was
5 71 days. (*Id.* at 5.) The Report assumed without deciding that Petitioner was
6 entitled to statutory tolling for the 71-day gap. (*Id.* at 6.)

7 (4) Petitioner constructively filed a habeas petition in the California
8 Supreme Court on March 3, 2011, which was summarily denied on August 17,
9 2011. (*Id.* at 2-3.) The gap between the Court of Appeal's denial and this filing
10 was 113 days. (*Id.* at 5.) The Report found that Petitioner was not entitled to
11 statutory tolling for the 113-day gap. (*Id.* at 6-8.)

12 (5) Without the benefit of statutory tolling for the 113-day gap, Petitioner
13 was effectively 21 days late when the California Supreme Court denied the
14 petition (113 - 92).

15 (6) The Report found that Petitioner was not entitled to equitable tolling.
16 (*Id.* at 9.)

17 (7) Petitioner constructively filed the initial federal petition on September
18 22, 2011. (*Id.* at 2.) The petition was late by 57 days, the 21 days noted above in
19 paragraph (5) above, plus 36 days from August 17, 2011, when the California
20 Supreme Court denied the habeas petition, to September 22, 2011.

21 Petitioner's objections to the Report have no merit.

22
23
24 DATED: April 28, 2013
25
26
27
28



ANDREW J. GUILFORD
United States District Judge